BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

MARK A. EVILSIZOR Claimant	}
VS.	Docket No. 105 295
T & K ENTERPRISES INC. Respondent	Docket No. 195,285
AND	{
FARM BUREAU MUTUAL INSURANCE Insurance Carrier	}

ORDER

The respondent appeals from a Preliminary Hearing Order entered by Administrative Law Judge Floyd V. Palmer on March 9, 1995.

ISSUES

The respondent and its insurance carrier filed this Application for Review raising the following issues, even though they failed to appear at the Preliminary Hearing and additionally failed to file a brief as requested by the Appeals Board:

- (1) Whether claimant suffered an accidental injury arising out of and in the course of his employment with the respondent;
- (2) Whether respondent received timely notice of claimant's alleged
- accidental injury;
 Whether the Administrative Law Judge exceeded his jurisdiction in (3) ordering temporary total disability compensation and medical benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a review of the preliminary hearing record and for preliminary hearing purposes, the Appeals Board finds as follows:

The first two issues raised by the respondent are jurisdictional and subject to review by the Appeals Board. See K.S.A. 44-534a(a)(2).

The remaining issue of whether the Administrative Law Judge exceeded his jurisdiction in ordering temporary total disability compensation and medical benefits is not subject to Appeals Board review. The Administrative Law Judge has jurisdiction, pursuant to K.S.A. 44-534a, to order these requested benefits pending a full hearing on the claim. Accordingly, the Administrative Law Judge did not exceed his jurisdiction and since this

issue is not a jurisdictional issue enumerated in K.S.A. 44-534a(a)(2), the Appeals Board does not have authority to review the same.

(1)(2)(3) The Administrative Law Judge found that the claimant had met his burden of proof and ordered respondent to provide requested temporary total disability benefits and medical treatment.

Respondent and its insurance carrier failed to appear at the Preliminary Hearing and thus did not cross-examine the claimant nor present any contradictory evidence. The Appeals Board finds that the claimant's testimony was not improbable, unreasonable or untrustworthy and therefore affirms the Administrative Law Judge's Preliminary Hearing Order. See Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order entered by Administrative Law Judge Floyd V. Palmer on March 9, 1995, should be, and the same is hereby, affirmed.

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Dated this day of June 1995.
BOARD MEMBER
BOARD MEMBER
ROARD MEMBER

c: Donald Strole, Lawrence, KS Jeffrey Austin, Overland Park, KS Floyd V. Palmer, Administrative Law Judge George Gomez, Director

IT IS SO ORDERED